S.B. CIVIL WRIT PETITION NO.1528/2005

Kishore Kumar & another.

vs.

Jai Narain Vyas University, Jodhpur & others.

Date : 21.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. P.S. Bhati, for the petitioner.

Mr. D.C. Sharma, for the respondents.

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

This Court constrained and passed order on 17.3.2005 after noticing that the Jai Narayan Vyas University, Jodhpur (for short 'the University) accepted application forms from the students in the Month of October, 2004 for taking examination for improvement of their percentage in the courses. Students including the petitioners deposited the fees in the University and copy of one of the receipt is placed on record which is dated 28.10.2004 and despite doing so by the students, the University, after almost about five months, communicated the students vide letter dated 9.3.2005 that their admission forms have been rejected on the ground that the course of final year (for eg. M.A. Final Year in Political Science) has been changed and, therefore, they cannot be permitted to improve their marks. Accordingly, this

Court directed on 17.3.2005 to send a copy of the order dated 17.3.2005 to the Registrar of the University and the University was directed as under :-

> "The respondent no.1 University is directed to explain when decision to change the course was taken as intimated in the communication dated 9th March, 2005 and why the said information was not given to the petitioner or the persons from whom the respondent University took the fees months before the start of examination and the respondent University further directed to inform the court, when they decided to reject the petitioner's examination form."

According to learned counsel for University, the petitioners no.1, 4 and 7 have not challenged the order by which they have been denied the opportunity. It is further submitted that in the copy of writ petition supplied to the respondents, the name of Kamlesh Kumari is not shown in the array of petitioners.

On merits, learned counsel for University submitted that the students should not have been denied permission to take examination for improving their percentage. In fact, they deserve to be given an opportunity to appear in the papers for which they applied.

Learned counsel for University further submitted

that for this, appropriate orders may be passed by this Court.

In view of the above statement, it appears that the entire matter has been handled by the University hopelessly carelessly and in gross negligence. It is very strange that the University itself after taking five months time, permitted students to believe that they may get admission card in time and thereafter, communicated the students that their application forms have been rejected on the ground that the course has changed.

It is most unfortunate that the persons sitting on the chair of the University post are seeking dismissal of the writ petition on the basis of not only technical but hypertechnical grounds that too without contesting the claim of the petitioners on merits in the matter of students seeking chance to appear in the examination for improvement of their percentage in the subjects which itself shows that the students are making all efforts to improve themselves.

The other shocking part is that in para no.4 of the reply, the University has taken a stand that Annexure-1 was issued to Chandraveer Singh and not to others except Prabhu Singh and thereafter the University has stated as under, which is very significant :-

> "It is significant to note here that this copy was issued to Chandraveer Singh before taking decision for cancellation by the office clerk."

Even if Annexure-1 was issued to Chandraveer Singh and Prabhu Singh, then according to the respondent University, those permissions were granted to these persons as the concerned clerk took decision for cancellation later on and before that, permission letter was issued to the students (with signature of Registrar of the University).

It may be relevant to mention here that Annexure-1 has been signed by the Registrar of the University and, therefore, it appears that the University wants to convey that the decision for cancellation was taken by the office clerk. It may be factually wrong as it is left to the Court to assume so but the University's stand today in open court is that whoever took the decision that was wrong and the conduct of the University cannot be ignored as the University requested for dismissal of the writ petition.

It may also be worthwhile to mention here that the University did not look into the order of this Court dated 17.3.2005 nor corrected its own mistake forthwith on receipt of the notice issued by this Court and even if not directly informed the students that they will be given permission to appear in the

examination, submitted reply for getting the writ petition dismissed so that those students who were and are entitled to take chance in the examination may not get their legitimate chance to appear in the examination.

Today, learned counsel for University, within a period of few days from the information communicated to the petitioners about rejection of their forms, stated without any reservation that the students, who applied despite the fact of change of course, are eligible and deserve to be given permission to take examination.

The reason for taking decision denying the admission is not there and changing one's taken decision within a few days is also not made clear in any manner.

Learned counsel for the University was very emphatic when he submitted that the students deserve the relief by the Court as noted above. Less said is better said about the working of the University in the matter of career of the students.

Let us examine the technical objections raised by the University. So far as objection raised by learned counsel for University regarding Kamlesh Kumari being not one of the petitioner is concerned, it is suffice

to say that Kamlesh Kumari is one of the petitioners in the writ petition filed before this Court and as per,learned counsel for University himself, the University received the annexure submitted along with writ petition relating to this Kamlesh Kumari, therefore, this objection is merely a technical objection.

So far as not placing on record the orders which were passed against the petitioners no.1, 4 and 7 is concerned, it is submitted that it is not the case of the University that their application forms have not been rejected and it is also not the case of the University that they have been granted permission to improve their percentage. The objection is absolutely a technical objection in view of the fact that the petitioners have placed on record few or even one of the rejection order and submitted that they are also being denied permission only because of the same reason which has been given in the rejection order of other candidates and when the facts are known to the respondents, then they should not have raised such objection at such a belated stage when the examinations are going to be held on and from 23.3.2005 and today is 21.3.2005.

There is no explanation, as argued by learned counsel for University in the Court, for denying the petitioners from taking chance of improving their

percentage by appearing in the papers which are permissible according to the University also. The guidelines as issued to the students even till October, 2004 provides that the students will be eligible to improve their marks by appearing in the examination in the succeeding year.

In view of gross negligence and indecisiveness of the University for a period of five months about the candidature of the petitioners and in view of taking absolutely wrong decision after five months and it has not been corrected voluntarily by the University before addressing this Court and also in view of the fact that technical objections have been raised so as to get this writ petition dismissed resulting into denying opportunity to the candidates who according to the University itself are eligible and have submitted application forms and fees in time, this Court is imposing exemplary costs of Rs.10,000/- for each petitioner against the respondent University for harassing them and behaving in such a careless manner.

In view of the above reasons, this writ petition is allowed with exemplary costs of Rs.10,000/- each to the petitioners and the respondent University is directed to allow the petitioners to appear in the examinations which are going to be conducted on and from 23.3.2005. In case, there arises any difficulty for permitting the petitioners to take examination on

23.3.2005 (if examination of any paper is on 23.3.2005), then for that paper, the University may hold a separate examination for the students as per the date convenient to the University.

(PRAKASH TATIA), J.

S.Phophaliya